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July 03, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: MM Docket No. 91-221; MM Docket No. 87-8;
MM Docket No. 94-150; MM Docket No. 92-51
and MM Docket No. 87-154

Dear Mr. Caton:

In response to the Commission's Public Notice (DA 97-1246) of June 17, 1997, requesting parties to television Local Marketing Agreements to submit certain information in connection with the above-referenced proceedings, there are transmitted herewith an original and four copies of the the "Joint Response of Lingard Broadcasting Corporation and WTVA, Inc." Lingard Broadcasting Corporation is the licensee of Television Station WLOV-TV, Channel 27, West Point, Mississippi. WTVA, Inc. is the licensee of Television Station WTVA, Channel 9, Tupelo, Mississippi.

Should any questions arise in connection with this matter, please communicate directly with undersigned counsel for Lingard Broadcasting Corporation and Henry A. Solomon, Esq., Haley, Bader & Potts, P.L.C., 4350 N. Fairfax Drive, Suite 900, Arlington, Virginia 22203-1633.

Very truly yours,



Robert E. Levine

REL/mcl

Before the
Federal Communications Commission
Washington, D.C. 20554

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JUL - 3 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Review of the Commission's Regulations
Governing Television Broadcasting

MM Docket No. 91-221

Television Satellite Stations Review of
Policy and Rules

MM Docket No. 87-8

Review of the Commission's Regulations
Governing Attribution of Broadcast and
Cable/MDS Interests

MM Docket No. 94-150

Review of the Commission's Regulation's
and Policies Affecting Investment in the
Broadcast Industry

MM Docket No. 92-51

Reexamination of the Commission's Cross-
Interest Policy

MM Docket No. 87-154

To: The Commission

**JOINT RESPONSE OF LINGARD
BROADCASTING CORPORATION AND WTVA, INC.**

By Public Notice (DA 97-1246) of June 17, 1997, the Commission requested all parties to existing television Local Marketing Agreements to submit certain information in connection with the above-referenced proceedings. Pursuant to the requirements set forth therein, Lingard Broadcasting Corporation ("LBC"), licensee of Television Station WLOV-TV, West Point, Mississippi, and WTVA, Inc., licensee of WTVA, Tupelo, Mississippi, hereby submit their joint response to the nine areas of inquiry posed by the Commission.

(1)	<u>Licensee</u>	<u>Call Letters</u>	<u>Channel No.</u>	<u>Community of License</u>
Brokered Station:	Lingard Broadcasting Corporation	WLOV-TV	27	West Point, MS
Brokering Station:	WTVA, Inc.	WTVA	9	Tupelo, MS

(2) Name and Rank of Nielsen Designated Market Area in which Stations are Located:

Columbus - Tupelo - West Point, MS
DMA 129

(3) The Grade B and Grade A contours of WTVA fully encompass the respective Grade B and Grade A contours of WLOV-TV.

(4) Date on which the parties entered into the LMA:

A "Program Services Agreement" initially was entered between WTVA, Inc. and Love Communications Company, the former licensee of WLOV-TV, on May 8, 1992. In conjunction with the consummation of the assignment of license of WLOV-TV to LBC, a revised "Program Services Agreement" between LBC, the present licensee of WLOV-TV, and WTVA, Inc., was entered August 12, 1994, and filed with the Commission on September 12, 1994.

(5) The "Program Services Agreement," is for an initial term of seven (7) years expiring August 12, 2001. Unless earlier terminated, the "Programmer" (i.e., the Broker) has the option to exercise two consecutive five (5) year renewals. Exercise of each renewal option must be delivered to the licensee "no later than sixty (60) days prior to expiration of the current term."

(6) The "Program Services Agreement" calls for WLOV-TV "to make its broadcasting transmission facilities available to Programmer and to broadcast on the Station, or to cause or to allow to be broadcast, for all or substantially all of the Station's air time, other

than those time periods devoted by Licensee to local news, public affairs and ABC Television Network programming, as set forth in this Agreement, programs produced or provided by Programmer.”¹ In actuality, on average, 31.3 percent of WLOV-TV’s programming derives from Fox Broadcasting Company.² This figure includes two weekly half-hour public affairs programs entitled “West Point of View” produced by WLOV-TV. Out of WLOV-TV’s remaining weekly broadcast schedule, 68.7 percent is programmed by WTVA.

- (7) WLOV-TV is affiliated with, but not owned by Fox Broadcasting Company and the Fox Children’s Network. WTVA is affiliated with, but not owned by, NBC.
- (8) The reported Nielsen all-day audience shares (measuring 9 AM through midnight) for each of the stations for the three most recent ratings periods are as follows:

	<u>Audience Share for Period Ended</u>		
	Nov. 1996	Feb. 1997	May 1997
WTVA	21	23	22
WLOV-TV	06	04	06

- (9) The history behind the “Program Services Agreement” pursuant to which WTVA and WLOV-TV operate is significant. Without the agreement, WLOV-TV likely would have ceased operations several years ago, and without its continuance, it likely would do so at this time. Indeed, absent the “Program Services Agreement,” LBC would not have acquired WLOV-TV. The history of WLOV-TV’s financial difficulties is a matter of Commission record. Nonetheless, certain factual information bears repetition at this time. Prior to the assignment of license to LBC, Love Communications Company (“Love”), the previous licensee, was having considerable financial difficulties traceable to WLOV-TV. As previously reported to the Commission, WLOV-TV was producing operating losses in excess of \$300,000 in 1991, and nearly \$500,000 per year by the end of 1992. So desperate was the prior licensee over the financial condition of WLOV-TV, that it conceived the idea and suggested to WTVA, Inc., that the two stations enter a “Program Services Agreement.” The resulting agreement was executed on May 8, 1992.

¹ Effective October 6, 1995, LBC switched its network affiliation to Fox Broadcasting Company.

² LBC, as the licensee of WLOV-TV, not WTVA, Inc., is the signatory to the Fox Broadcasting Company affiliation agreement.

Similar financial information was reported to the Commission by Love in 1992 in connection with its application for authority to co-locate its main studio with that of WTVA. The station struggled for its very existence as the only UHF station in the Columbus-Tupelo market, competing with four VHF stations (two commercial and two noncommercial). In authorizing the main studio move, the Commission, fully aware of the existence of the "Program Services Agreement," acknowledged that WLOV-TV operated "at a serious competitive disadvantage with its rivals." The Commission noted that WLOV-TV had an average daily circulation of only 35,000, "significantly less than that of its VHF commercial competitors WTVA(TV) (145,000) and WCBI-TV (109,100)." Although the 1997 Cable Television and Factbook reports a decline of approximately 20% for each of those stations in 1996, the corresponding figure for WLOV-TV still leaves it a woefully distant third in the market at 35,828, amounting to virtually no increase in five years. The Commission recognized, by letter of November 25, 1992 (FCC File No. BMLCT-920805KI), that the studio relocation would allow reduced "costs associated with rent, maintenance, utilities, local taxes and fees, and staffing." The Commission found the overall arrangement to be in the public interest and granted the application for modification of license.

This entire matter was carefully scrutinized by the Commission prior to its approving the assignment of license of WLOV-TV to LBC (See FCC File No. BALCT-930831KI). While WTVA has the right under the "Program Services Agreement" to program the station, LBC, as the licensee of WLOV-TV, has elected to affiliate with Fox Broadcasting Company, whose programming accounts for a significant portion of the station's broadcast day. Other unique aspects of the "Program Services Agreement" set this arrangement apart from typical "local marketing" or "time brokerage" agreements. For instance, LBC may, at its sole discretion, pre-empt any broadcasts and use part or all of the time contracted for to cover "special news events of public importance to West Point and other communities and areas within the coverage contour of the station." LBC also retains the right to produce and broadcast two one-half hour programs per week to deal with issues of local interest to residents of West Point. This is in addition to any such programming produced by WTVA. Furthermore, LBC has the right to "recapture up to two (2) hours of air time per week every four (4) months, with no diminution in the compensation it is to receive." The agreement was intended to provide a situation that may someday permit WLOV-TV to achieve total independence. However, that day has not arrived, and with increased competition from cable television and DBS, together with the future anticipated obligations and concomitant financial costs imposed by DTV, it cannot be projected at this time when, if ever, that may occur.

To the extent that the WTVA Grade B contour fully encompasses that of WLOV-TV, that situation essentially results from the fact that the stations are co-located at the WTVA transmit site. That coincidence, however, has nothing to do with the "Program

Services Agreement" between the stations. Rather, it results from the decision not of LBC, or the prior licensee of WLOV-TV, but of the original licensee of WLOV-TV, when the station was known as WWSB-TV. Essentially, LBC and WTVA have accepted the situation as it has existed since the Channel 27 facilities were authorized on October 14, 1983. Indeed, television stations co-locating their transmit facilities, is encouraged by the Commission (See §73.635 of the Commission's Rules). Of course, it has made practical and economic sense to continue this relationship.

The cost savings inherent in the relationship are readily evident, but so too are the public interest benefits. For instance, WLOV-TV and its viewers receive full benefit of the automatic, computerized weather station operated by WTVA, including its Doppler Radar weather system. With WTVA's three meteorologists and its computerized system that can automatically broadcast weather warnings when triggered by NOAA (National Oceanic and Atmospheric Administration), WLOV-TV viewers are provided with a substantial advantage that otherwise would not be available to them. Similarly, prior to implementation of the agreement between the two stations, WLOV-TV had no local ENG (Electronic News Gathering) facilities of its own. Now it receives the advantage of the ENG facilities operated by WTVA.

The relationship between LBC and WTVA is an "arm's length" relationship that has been necessitated by market conditions. The Commission specifically gave its approval to the relationship between these two stations when it granted its consent to the assignment of license of WLOV-TV to LBC. It did so with full knowledge of the technical parameters of the stations and the fact that a programming agreement would be employed to provide cost savings and efficiencies necessary to promote the financial viability of WLOV-TV. Without benefit of the "Program Services Agreement," WLOV-TV would have gone dark several years ago.

At this point in time, its continuance is essential for the survival of the station. The economies of scale and operating efficiencies that result from the arrangement facilitate the existence of this UHF station as another voice in the local marketplace. It is essential to the continued viability of WLOV-TV that it be permitted to continue under its present "Program Services Agreement" with WTVA. While WLOV-TV's financial prospects showed slight improvement for the calendar year ended December, 1996, its balance sheet still reflects substantial negative retained earnings and a ratio of total current liabilities to total current assets of nearly nine to one!

The acquisition of WLOV-TV by LBC was approved by the Commission with full disclosure of the circumstances and the existence of the "Programming Services Agreement." Only on the basis of the existence of the "Program Services Agreement" would LBC have sought to acquire WLOV-TV. Indeed, not only did LBC borrow a substantial sum of money to acquire WLOV-TV, but LBC's sole shareholder, John R.

Lingard, as well as his wife, each were required to sign a personal guaranty with respect to the amount borrowed. Should the Commission adopt rules that would prohibit or limit arrangements such as exist between LBC and WTVA, Inc., it should "grandfather" any such existing relationships. To do otherwise, would, in this case, work an extreme financial hardship on LBC and Mr. and Mrs. Lingard, not to mention the deprivation of service that likely would result to the viewers of WLOV-TV to the ultimate detriment of the public interest.

Respectfully submitted,

WTVA, INC.

By: 

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Dated this 3rd day of July, 1997.